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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

Writ Appeal Nos.1961 and 1825 of 2004

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Writ Appeal No.1961 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 13/09/2004 in WP No : 24513 of 2002 on the file of the High Court.)

Between:

R. Sambamurthy, S/o. Late Sri R. Lakshmi Narasimha,
R/o. Paparajuthota, H.No.10-357, Chirala, Prakasam District.

..... APPELLANT

AND

1 State Bank of India, Corporate Office Mumbai, 400 021 Rep. by its Deputy

Managing Director and Corporate Development Officer.
2 The Chief General Manager and appointing authority State Bank of India,

Local Head Office, Hyderabad.
3 The General Manager (Development & Personnel Banking) Disciplinary

Authority State Bank of India, Bank Stree, Hyderabad.

.....RESPONDENTS

Counsel for the Appellant: PARTY-IN-PERSON

Counsel for the Respondents: MR.K.SRINIVASAMURTHY

and

Writ Appeal No.1825 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 13/09/2004 in WP No : 24513 of 2002 on the file of the High Court.)

Between:

1 State Bank of India, Mumbai-400 021, rep by its Deputy Managing

Director and Corporate Development Officer.

2 The Chief General Manager and Appointing Authority, State Bank of India,

Local Head Office, Hyderabad.

3 The General Manager (Development & Personal Banking) Disciplinary

Authority, State Bank of India, Bank Street, Hyderabad.

..... APPELLANTS

AND

R. Samba Murthy, S/o. Late R. Lakshmi Narasimham,
R/o. Paparajuthota H.No.15-357, Chirala-523 155,
Prakasam District.

.....RESPONDENT

Counsel for the Appellants: MR.K.SRINIVASAMURTHY

Counsel for the Respondent: PARTY-IN-PERSON

The Court made the following :

COMMON JUDGMENT: (Per the Honourable Smt. Justice T.Meenakumari)

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The present writ appeals are preferred by the writ petitioner, party-in-person, Mr.R.Sambamurthy, as well as the State Bank of India-respondents respectively aggrieved against the order in W.P.No.24513 of 2002 dated 13-09-2004.

The above writ petition has been filed by the writ petitioner to quash the orders of dismissal issued by the Chief General Manager vide proceedings No.VIG/2957 dated 11-03-1997, as confirmed by the order of the appellate Authority dated 14-08-2002, communicated to him on 16-08-2002. The learned judge after going into the merits of the case and after hearing all the parties while upholding the finding of misconduct against the petitioner has chosen to modify the punishment of removal on the petitioner as that of the punishment of compulsory retirement from the service.

The learned counsel appearing for the bank-respondents has contended that the order of the learned single judge suffered from the infirmity in view of the fact that this court cannot go into the question of punishment in view of the law laid down by the Apex Court and hence it is liable to be set aside on that ground. But, however, the party-in-person, R.Sambamurthy, argued at length before us with regard to conducting of the enquiry by the Bank and also subsequent events that took place, which culminated in filing of the writ, being W.P.No.13201 of 1998, which was allowed by this Court.

In the instant case, we do not want to go into the merits of the impugned judgment in view of the fact that the learned single judge having found the misconduct proved, modified the punishment.

In a decision reported in B.C.CHATURVEDI v. UNION OF INDIA, it is held by the Apex Court that the High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would

appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

In view of the principles laid down by the Apex Court in the above decision, we have no hesitation to hold that the learned single judge with regard to the modification of the punishment is not justified and the same is liable to be set aside and accordingly it is set aside.

The observations made by the learned single judge with regard to the consideration of the appeal by the appellate authority has to be upheld setting aside the order of the appellate authority. We are also had an occasion to go through the records produced by both the parties before us and also order of the appellate authority. We also observe that the appellate authority has not passed the orders in pursuance of the order dated 26-06-2002 passed by the learned single judge of this court in W.P.No.13201 of 1998. The appellate authority has not considered the entire material available on record and while disposing the appeal, the appellate authority observed as follows:

> "In the instant case I have given thoughtful considerations as to whether the penalty of 'removal from service' imposed on the appellant was warranted or a lesser penalty would suffice. I observe that the irregularities/acts of commission and omission held against the appellant evidently show that these were not in the nature of normal course of lending. Although a Field Officer was posted at the branch to process new loans, he was not involved and loans were processed and sanctioned in haste by the appellant. Defaulters of loans were sanctioned new loans much against the instructions of the Bank. The various irregularities committed by the appellant are not procedural or minor in nature but are very grave in content and also resulting in financial loss to the Bank. In my opinion, retaining him in the service of the Bank would be detrimental to its interest. I, therefore, consider that the penalty of 'removal from service' is proportionate and equitable to the gravity of misconduct committed by the appellant and accordingly reject the appeal of Shri Samba Murthy as without merit."

In view of the findings of the appellate authority it goes to show that the appellate authority has not applied its mind and has come to the conclusion of its own, more so not basing on the material available on record and directions issued by the learned single judge of this court.

In the above circumstances, we feel it appropriate to remand back the matter to the

appellate authority for proper consideration of the matter taking into consideration of all the material available on record and also to pass appropriate orders within a period of three months from the date of receipt of a copy of this order.

The party-in-person, Mr.R.Sambamurthy, sought a direction to the appellate authority to pass the final orders after hearing him and he has also sought leave of this Court to make an appropriate representation before the appellate authority explaining the consequent family circumstances due to disciplinary proceedings.

We see some force in the submissions made by the party-in-person. No material was placed before this Court by the Bank showing the misconduct of the petitioner previously. Even the counter filed by the bank did not show as to his past misconduct or disciplinary action, if any.

Under the above circumstances, leave is granted to the party-in-person, Mr.R.Sambamurthy, to make an appropriate application before the appellate authority. We also make it clear that the appellate authority shall pass final orders after affording an opportunity of hearing to the party-in-person, Mr.R.Sambamurthy, in accordance with law.

In the above circumstances, the order of the learned single judge, dated 13-09-2004 in W.P.No.24513 of 2002 imposing the punishment of compulsory retirement, as against the punishment of removal from the service, is set aside.

Accordingly, these two writ appeals are disposed of on merits.

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JUSTICE T.MEENA KUMARI

1st February, 2005

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JUSTICE S.ANANDA REDDY

Kvh/skmr

.....REGISTRAR

To

1 The Deputy Managing Director and Corporate Development Officer,

State Bank of India, Corporate Office, Mumbai-400 021.
2 The Chief General Manager and appointing authority State Bank of India,

Local Head Office, Hyderabad.
3 The General Manager (Development & Personnel Banking) Disciplinary

Authority State Bank of India, Bank Street, Hyderabad.

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